

Judgement No. 346

(Original: English)

Case No. 342:
Chojnacka**Against: The Secretary-General**
of the United Nations

Request by a former staff member of the United Nations for reconsideration of the Joint Appeals Board's conclusion that certain overpayments made to the Applicant be returned; request for compensation for delay in the disposal of the Applicant's case.

Conclusion of the Joint Appeals Board that only part of the salary payments made to the Applicant at the dependency instead of the single rate should be treated as overpayment and that the overpayment arose through the Organization's negligence.—Recommendation to award to the Applicant a sum of \$US 800 for the abnormal delay in paying her the balance of her salary and separation payments.—Recommendation accepted.

Applicant's claim for the payment of the balance of her salary at the dependency rate. The Tribunal is unable to judge the validity of the claim since the amount claimed is not calculated on the basis of the recommendation of the Joint Appeals Board and disregards the payments already made by the Respondent.—Confirmation of the Board's findings in respect of the period for which the Applicant was not entitled to the dependency rate—Order to the Respondent to review the claim for the salary due.—Finding that the claims concerning annual leave and repatriation grant have been settled.—Applicant's claim for excess baggage.—Absence of any explanation in the application.—Claim rejected.—Applicant's claim for expenses incurred before the Joint Appeals Board.—Unusual and unsubstantiated nature of this claim.—Claim rejected.—Applicant's claim of \$US 25,000 as compensation.—Claim irreceivable under article 7 of the statute.—Multiple administrative errors and extensive delays in settling the case.—Conclusion that the amount requested by the Applicant is inordinately high.—Finding that the Applicant's innocence was tainted as she continued to accept monies which with some diligence she should have identified as overpayment.—Finding that the Applicant contributed to the procrastination of her case by not accepting the settlement offered to her.—Conclusion that the Applicant was adequately compensated by the amount recommended by the Joint Appeals Board.

Subject to the order above, application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Endre Ustor;
Mr. Herbert Reis;

Whereas, on 23 October 1984, Helena Chojnacka, a former staff member of the United Nations, filed an application in which she requested the Tribunal:

"A. to re-examine the Joint Appeals Board's Conclusions and Recommendations (paras. 37 to 42 . . .) and

"B. To hold that the Respondent's delay in answering the Applicant's request for review, the delays attributable to the Administration in producing a settlement offer and a financial statement, and the failure of the Respondent to communicate his decision on the report of the Joint Appeals Board, constitute a violation of the terms and conditions of the Applicant's contract and a *détournement de pouvoir*; and

"C. To find that the Applicant has suffered protracted and unnecessary hardships and anxiety as a result of these delays; and

"D. To order payment to the Applicant of the amounts claimed; . . .
and

"E. To award damages in the amount of \$25,000 for hardships, pain and suffering occasioned by the illegal and unconscionable delays."; Whereas the Respondent filed his answer on 6 March 1985; Whereas the Applicant filed written observations on 9 May 1985; Whereas the Applicant filed an additional document on 13 May 1985; Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 12 October 1977. She was initially offered a twelve-month fixed-term project personnel appointment at the L-4, step IX level in the Department of Technical Cooperation for Development and was assigned to Lagos, Nigeria as an Economic Demographer. At the time of her recruitment, the Applicant was entitled under the relevant Staff Regulations and Rules to payment of her salary and allowances at the dependency rate because her son, Christopher Cholaj, born on 17 December 1957 was under twenty-one years of age. The Applicant had been informed of this entitlement in a cabled offer of appointment dated 21 July 1977 which stated:

"... YOU ENTITLED THIS DEPEND[E]NCY RATE SALARY PROVIDED YOU SHOW EVIDENCE YOUR SON IN FULLTIME ATTENDAN[C]E AT SCHOOL OR UNIVERSITY AND UNDER TWENTYONE YEARS OLD. THEREFORE SONS BIRTH CERTIFICATE AND SCHOOL CERTIFICATE STATING HE ENROLLED EDUCATIONAL INSTITUTE REQUIRED. DEPENDENCY ALLOWANCE IN RESPECT SON WILL BE PAID LUMP SUM AT END OF SCHOOL YEAR. YOU ALSO RECEIVE ASSIGNMENT ALLOWANCE DEPENDENCY RATE EQUIVALENT USDOLLARS . . . PER ANNUM AND POST ADJUSTMENT EQUIVALENT USDOLLARS . . . BOTH PAYABLE ONEHUNDRED PERCENT DUTY STATION CURRENCY. . . ."

On 12 October 1978 the Applicant's appointment was extended for a further fixed-term of six months at the L-4, step X level, until 11 April 1979. Since the Applicant's son was twenty years old at the time of the extension, but would turn twenty-one years old on 17 December 1978, the Letter of Appointment specifically stated under section 5 on "Special Conditions":

"Entitled to dependency rate of net salary up to the date that the expert's depend[e]nt son reaches 21 years of age on 17 December 1978, after which time the net salary and allowance will be paid at the single rate."

A Personnel Action Form dated 25 September 1978 was issued to implement the six-month extension. The Applicant's son was listed therein as her dependant, but the special condition stipulated in the letter of appointment was not recorded and consequently the Applicant continued to receive her salary and allowances at the dependency rate after 17 December 1978, her son's twenty-first birthday.

In a cable dated 27 June 1979, a Recruitment Officer at Technical Assistance and Recruitment Service, Department of Technical Co-operation for Development (TARS/TCD) at Headquarters, informed the Applicant that

"REF EXTENSION YOUR APPOINTMENT THROUGH 31 DECEMBER 1980. AS PER PROJECT PERSONNEL CIRCULAR ST/ADM/SER.P/30/REV.3 DATED 11 MAY 1979 CHANGES HAVE BEEN INSTITUTED IN EDUCATION GRANT SYSTEM WHICH MAY AFFECT YOUR ENTITLEMENT TO DEPENDENCY RATE SALARY BEYOND DATE SON REACHED TWENTY-ONE YEARS ON 17 DECEMBER 1978. PREVIOUS AGE LIMIT OF TWENTYONE YEARS FOR ELIGIBILITY TO EDUCATION GRANT HAS BEEN CHANGED TO UP TO END OF FOURTH YEAR OF POST-SECONDARY STUDIES OR AWARD OF FIRST RECOGNIZED DEGREE WHICHEVER IS EARLIER. KINDLY ADVISE BY RETURN CABLE WHETHER SON STILL IN FULL-TIME SCHOOL

ATTENDANCE AND WHETHER FIRST RECOGNIZED DEGREE ALREADY OBTAINED OR APPROXIMATE DATE OF COMPLETION. . . .”

The Applicant replied in a letter dated 2 July 1979 that her son’s graduation was expected in 1981. She enclosed her request for payment of the education grant and explained that the school’s certificate of attendance would be forwarded to TARS/TCD soon.

On 28 July 1979 the Applicant retroactively signed the final extension of her fixed-term appointment at the L-4, step XI level, for twenty months and twenty days from 12 April 1979 until 31 December 1980. This letter of appointment stated under “Special Conditions” that the Applicant was

“Entitled to dependency rate of net salary and allowances up to the date that the expert’s dependent son has been awarded the first recognized degree or up to the end of the fourth year of post-secondary studies, whichever is the earlier.”

A Personnel Action Form issued to implement the extension recorded the Applicant’s son as her “depend[en]t but did not mention the ‘Special Condition’ of the letter of appointment. Although the Applicant’s son completed his fourth year of post-secondary studies on 30 June 1980, the Applicant’s salary and allowances continued to be paid at the dependency rate until the expiration of her appointment on 31 December 1980, when she separated from the service of the United Nations. On 6 January 1981 the Applicant requested that her November and December salary be released to her account at the Chemical Bank in New York as “an advance against her final pay”.

On 11 February 1981 a Recruitment Officer at TARS/TCD informed the Chief, TARS/TCD that on processing the Applicant’s separation payments, the question arose whether the Applicant was entitled to payment of her salary and post adjustment at the dependency rate “for the period 17 December 1978 (when her son reached the age of 21) through the expiration date of her appointment on 31 December 1980”. The Recruitment Officer noted that although “strictly speaking” the Applicant’s salary and post adjustment should have been paid at the single rate, recovery of the sums involved would at that stage “cause hardship to the expert” and it was unlikely that the Applicant “would have accepted a reduction in salary from the dependency rate . . . to the single rate . . . , plus the corresponding reduction in post adjustment” at the time. In light of these considerations she recommended that the Applicant’s salary be reclassified in order to be equivalent “to the old scales of L.5/VII, . . . retroactively to 1 January 1979”. In a handwritten note at the bottom of the page, the Chief, TARS/TCD agreed with the recommendation.

On 11 May 1981 the Chief, Staff Services, OPS [Office of Personnel Services] informed the Chief, TARS/TCD that the Office of Financial Services considered that “the reclassification on 13 February 1981 to compensate for the administrative error (failure to discontinue payment at the dependency rate) is improper”. He added:

“OFS [Office of Financial Services] considers that the \$1,606.27 overpayment could be considered for write-off in accordance with Financial Rule 110.14 and the balance of the \$7,796.86 total overpayment through 31 October 1980 should be recovered from the unpaid November and December 1980 salary, accrued annual leave and the repatriation grant.”

On 14 May 1981 the Chief, TARS/TCD requested the Chief, Staff Services, OPS to intervene in order that the Office of Financial Services reconsider the Applicant’s case.

On 31 May 1981 the Applicant received a statement from the Accounts Division at Headquarters requesting that she pay the United Nations the sum of \$1,606.27. On 19 June 1981 the Applicant addressed a letter to the Office of Financial Services which read as follows:

"This is to state that as of this date I have not received 1/4 of my last two month's salary (November/December 1980), nor the repatriation grant to which I am entitled after three years of service for the United Nations.

"In addition, my Pension Fund money accumulated during the three-year period was withheld until 22 May 1981, although my contract with the UN terminated on 30 December 1980. This delay of nearly five months represented a great loss of interest income and has caused me hardship and anxiety.

"These withheld payments amount to a considerable sum of money on which I was relying on my return from mission service. I have to date received no written explanation for the delay nor any request for formal action on my part.

"I would appreciate, as soon as possible, a statement from the Administration, explaining my status."

On 30 June 1981 the Applicant received a second statement from the Accounts Division at Headquarters requesting that she pay the United Nations the amount of \$1,606.27.

On 17 July 1981 the Chief of Staff Services, OPS asked the Assistant Secretary-General for Personnel Services to "approve exceptionally the payment already made to Mrs. Chojnacka and not seek recovery from her" on the following grounds:

"3. . . . It is recognized that the overpayment was clearly due to an administrative error and an oversight. Whoever may have been responsible for the error, as far as the former expert is concerned, it was an error of the Organization, and the Organization must bear the responsibility, unless there is a basis for imputing bad faith to the expert or collusion with the Administrative Officer.

"4. As is indicated in the attached table, the total sum of overpayment involved is \$8,544.45. Her salary entitlement (November and December 1980) plus annual leave and repatriation grant amounted to \$13,348.18. A salary advance of \$6,400 was paid. Thus, if the overpayment is to be recovered, she would still have to pay the United Nations \$1,606.27."

On 7 August 1981, not having received a reply to her letter of 19 June 1981 addressed to the Office of Financial Services, the Applicant requested the Secretary-General "an urgent review under Staff Regulation 11.1 of the administrative decision to withhold [her] final payments and to claim from [her] an amount of money without any statement of the financial rule being invoked". Having received no reply from the Secretary-General, on 17 November 1981 the Applicant lodged an appeal with the Joint Appeals Board.

On 17 February 1982 the Applicant requested direct submission of her appeal to the Administrative Tribunal. On 14 July 1982, not having received an answer to her letters of 7 August 1981 and 17 February 1982, she addressed a further letter to the Secretary-General. In a reply dated 13 August 1982, the Assistant Secretary-General for Personnel Services informed the Applicant that consultations were being held between the Office of Personnel Services and the

Office of Financial Services "with a view to a possible agreed solution without waiting for the full appeal procedure to be completed".

In a letter dated 26 August 1982 the Acting Chief of the Administrative Review Unit, OPS proposed to the Applicant a settlement of her case on the following terms:

"The proposed settlement would entail the strict implementation of the terms of the successive Letters of Appointment signed by you, even when such contractual terms were included by administrative error and were not in conformity with the applicable Staff Regulations and Rules. Thus, under this proposed settlement, whenever you were entitled to dependency rate pursuant to the contractual terms, you would not have to reimburse the United Nations. Whenever you were not entitled to the dependency rate pursuant to the contractual terms, even if you were paid due to an administrative error, you would repay the United Nations.

"In practical terms, this means that you would not have to reimburse the United Nations for payments made during the period 12 April 1979–30 June 1980, whereas you would have to reimburse for the periods 17 December 1978–11 April 1979 and 1 July–31 December 1980."

According to the records of the Joint Appeals Board's proceedings the parties could not agree on a settlement and on 15 December 1983 the Representative of the Secretary-General filed his statement on behalf of the Secretary-General. The Joint Appeals Board adopted its report on 8 June 1984. Its conclusions and recommendations read as follows:

"Conclusions and recommendation"

"37. The Panel considers that in terms of the exchange of cables NYK021-07 dated 21 July 1977, and MAP1909-06 dated 27 June 1979 and the letter of appointment and Personnel actions (P.5) established by TARS on behalf of the Secretary-General and Assistant Secretary-General, Personnel Services, respectively, the appellant is entitled to dependency rate of salary and allowances from the date of her initial appointment through 30 June 1980 on which date the appellant's son completed fourth year of post-secondary studies.

"38. The Panel considers that only the payment made to the appellant at the dependency rate instead of at the single rate during the period 1 July to 31 December 1980 should be treated as overpayment.

"39. The Panel finds that the overpayment referred to in paragraph 38 had arisen because of negligence on the part of officials concerned both in TARS and in the Payroll section. The appellant had in no way contributed to this overpayment, but on the other hand received such payment in good faith. The Panel, at the same time, finds that in terms of the letter of appointment dated 5 July 1979 which the appellant had signed on 28 July 1979, the appellant had no legitimate entitlement for the dependency rate of salary and allowances beyond 30 June 1980 when her son completed the fourth year of post-secondary studies. The Panel therefore recommends that any excess payment made to the appellant over and above the single rate of salary from 1 July to 31 December 1980 should be recovered from the appellant.

"40. The Panel finds that in terms of the letter of appointment dated 5 July 1979 signed by Ms. Sandy D. Tomas, for the Assistant Secretary-General, Personnel Services, on behalf of the Secretary-General, the appellant was entitled to receive salary at step XI in the L-4 level from 12

April 1979. The appellant was also granted a salary increment to step XII in the L-4 level from 1 April 1980. The Panel is of the view that no recovery should be made in this respect, as the Organization is bound by the terms of employment as outlined in the letter of appointment referred to above.

"41. In conclusion, the Panel considers that if the Organization had adhered to the obligations entered into with the appellant in the letter of appointment, cables and other communications, the appellant would have been paid her separation benefits and balance of salary for November and December 1980 at the earliest in January 1981. Although more than three years have elapsed since the appellant separated, the separation payment due to her has still not been made. The Panel observes that the delay in paying the separation benefits to the appellant had naturally caused her undue inconvenience and financial hardship. The Panel recommends that the appellant be awarded a sum of \$US 800 for the abnormal delay in paying her the balance of salary for November and December 1980 and her separation entitlements.

"42. The Panel makes no other recommendations in support of the appeal."

On 23 October 1984, not having received a copy of the Joint Appeals Board report nor the Secretary-General's decision thereon, the Applicant filed the application referred to earlier.

On 17 December 1984 the Assistant Secretary-General for Personnel Services informed the Applicant that

"The Secretary-General has taken note of the Board's report and, in light of the Board's report, has decided:

"(a) to recover from you only the amounts paid over and above the single rate from 1 July to 31 December 1980, and, therefore, to pay you separation entitlements and balance of salary for November and December 1980 less the above-mentioned overpayment;

"(b) to pay you \$800 as compensation for delay; and

"(c) to take no further action on this case.

" . . . "

On 21 January 1985 the Applicant received and accepted a cheque for \$5,512.26 from the United Nations. Attached to the cheque was an undated financial breakdown of the sums involved. The Applicant did not withdraw the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The unreasonable delays at all stages of the case constitute a violation of the terms and conditions of the Applicant's contract. The purpose of the time-limits set forth in the Staff Regulations and Rules and in the Statute of the Administrative Tribunal is to provide for expeditious settlement of disputes and prevent staff members from subjection to prolonged doubts and uncertainties. This purpose is defeated if the Respondent delays the proceedings indefinitely by failing to respond for months and years on end.

2. The unreasonable delays at all stages of this case constitute a *détournement de pouvoir* for which compensation is due. Simple negligence by the Respondent can cripple judicial proceedings in the same manner as failure to observe due process. Negligence in this case is all the more unconscionable because the predicament in which the Applicant found herself was due to multiple errors on the Respondent's part.

Whereas the Respondent's principal contentions are:

1. The Applicant has failed to establish that the decision taken to recover a small portion of the over-payments made to her was in violation of any of her rights under the Staff Regulations and Rules or an abuse of power.

2. The Organization is under no obligation to pay damages for delays resulting from a *bona fide* attempt to apply the Staff Regulations and Rules.

The Tribunal, having deliberated from 21 May to 12 June 1985, now pronounces the following judgement:

I. The Applicant requests the Tribunal to order payment to her of the following amounts:

(a) \$2,077.32 for "balance of salary due, November and December 1980 at the dependency rate";

(b) \$1,002.80 for "annual leave—8 days";

(c) \$3,864.54 for "repatriation grant, at single rate";

(d) \$285.— for "excess baggage";

(e) \$275.— for "expenses incurred in attempting to get her case before the Joint Appeals Board"; and

(f) \$25,000.— for damages for "delays, uncertainties, anxiety, humiliation and hardship suffered".

In her appeal addressed to the Joint Appeals Board the Applicant asked interest on the sums under (a) to (d) "at such rates and for such periods as the Board shall determine" and by reference to this appeal she probably maintains this claim also before this Tribunal.

II. As to item (a), i.e. the balance of salary for November and December 1980 which was allegedly due to the Applicant at the time of the submission of application, there is no explanation offered in the application for the amount claimed. The sum of \$2,077.32 is seemingly the result of her counsel's calculation presented in a letter dated 9 March 1984 and addressed to Mrs. Joan Gordon, Secretary of the Joint Appeals Board. The Tribunal is not in a position to judge the validity of this claim since the amount (i) is obviously not calculated on the basis of the recommendation of the Joint Appeals Board and the decision of the Respondent of 17 December 1984; and (ii) does not take account of the payment by the Respondent effected on 21 January 1985. Nor is any explanation given by the Applicant why she wishes the remainder of her salary for November and December 1980 to be calculated at the dependency rate and not at the single rate as recommended by the Joint Appeals Board. The Tribunal notes that this recommendation has been accepted by the Respondent.

The application simply refers to the arguments unsuccessfully put forward before the Joint Appeals Board in an appeal dated 7 February 1984. The Tribunal is, however, also able to accept the argument that the Applicant "has a moral and equitable claim to payments at the dependency rate for 1 July 1980 through December 1980". Such a demand cannot be made *bona fide* against (i) the "Special Condition" written in the Applicant's letter of appointment of 28 July 1979 and (ii) the relevant Staff Regulations and Rules.

The Tribunal confirms that the Applicant is not entitled to the dependency rate for the period from 1 July to 31 December 1980 and her emoluments must be calculated for this period at the single rate. It is in accordance with this conclusion that the Tribunal directs the Respondent to review the claim for salary due and to inform the Applicant in detail within 30 days whether any

amount is still due to her and, if in the affirmative, to pay her the admissible amount within the same time-limit.

III. According to the analysis transmitted to the Applicant by the Respondent on 21 January 1985, the amount paid on this date included items (b) and (c) referred to in paragraph I concerning "annual leave" and "repatriation grant". The Tribunal concludes that these claims have been definitively settled.

IV. The application does not contain any reasons for the admission of item (d) concerning "excess baggage", nor any complaints concerning the rejection of that claim by the Joint Appeals Board.

The Board reported on this claim as follows:

"As for the appellant's claim for excess baggage charges of \$US 285 which she had incurred at the time she took up her appointment in October 1977, the Panel observed that that claim was not part of the appellant's appeal dated 17 November 1981. However, the Panel noted that both the Office of Personnel Services and the Office of Financial Services had, after due consideration, rejected the claim."

The Respondent, in his answer, while requesting the rejection of all of the Applicant's pleas and claims does not mention this item. Nevertheless, the Applicant in her written observations on the Respondent's answer reverts to this matter and to the Joint Appeals Board's finding quoted above. She alleges that this claim was part of her appeal made on 17 November 1981 because there she wrote about the withholding of her "final payments". This expression—she holds—must be interpreted as including that claim which arose in 1977 when she occupied her post.

She refers also to a letter dated 14 April 1983 addressed to her counsel by Mr. Alberto Perez, the Acting Chief of the Administrative Review Unit, and interprets it as indicating that the latter "considered the claim valid". The relevant part of that letter runs as follows:

"*Excess baggage* (item 4).—The amount involved is not very large, and therefore it *may* be possible to consider this claim, although it was not part of Mrs. Chojnacka's appeal, in view of her correspondence with other units within the Secretariat. I will consult the relevant officials in this respect."

The Tribunal is unable to accept any of the interpretations of the Applicant and finds that her claim to \$285 for excess baggage cannot be upheld.

V. The claim to item (e) concerning "expenses incurred in attempting to get her case before the Joint Appeals Board" is also not mentioned in the application except by reference to the appeal submitted to the Joint Appeals Board. There the Applicant explained her claim as follows:

"The Appellant has incurred expenses in postage, toll telephone calls (about \$12), trips to New York (about 20 at \$12 a trip), in pursuing her claim, which should be reimbursed. Receipts for such expenses are not really readily available, but about \$275.00 should adequately cover them, not counting her time and the distress and anxiety involved."

The Joint Appeals Board made no recommendation concerning this claim. The Tribunal is also unable to uphold this unusual and unsubstantiated claim.

VI. The demand of \$25,000 as compensation for "delays, uncertainties, anxiety, humiliation and hardship suffered" is the main subject of the application submitted to this Tribunal.

The Tribunal notes that this is a matter which was not raised before the Joint Appeals Board and therefore, under strict interpretation of article 7 of the Statute of the Tribunal, that part of the application is not receivable. Before the Board, the Applicant requested only interest on the monies not paid at the correct time. Nevertheless, the Tribunal wishes to make the following brief remarks.

The relevant facts are simple: when the Administration discovered that the Applicant received during the years by multiple administrative errors more emoluments than she was entitled to according to the relevant Regulations and Rules, her salary for the last two months of her service, i.e. November and December 1980 was withheld together with other final payments, apparently for the purpose of recovering from her an amount close to \$10,000 of overpayment.

In January 1981, however, she received an amount of \$6,400 which the Applicant describes as approximately three quarters of her salary for November-December 1980. The Office of Financial Services found in 1981 that the amounts withheld did not cover the overpayment and reminded the Applicant several times that she had to pay the balance of \$1,606.27 and ultimately threatened her with legal action. The Applicant asserts that the basis of this claim was never explained to her.

As the Applicant was unsuccessful in convincing the Administration that she could not be held responsible for the errors committed in her case, she filed her appeal with the Joint Appeals Board on 17 November 1981. The procedure before the Joint Appeals Board lasted until 8 June 1984, and on 17 December 1984 the Secretary-General accepted the Board's report and recommendations. The Board recommended that only a fraction of the overpayment which she received during the years should be recovered from her. Now, the Applicant complains before the Tribunal for the Respondent's delays at all stages of the case and asks for damages.

The Tribunal shares the Applicant's view that (i) the Respondent could have been much more expeditious in settling the dispute which, however unusual, was caused mainly by multiple errors of the Administration, (ii) the procedure before the Joint Appeals Board lasting from November 1981 to June 1984 was too long, and (iii) it took more than six months for the Respondent to decide on the report and recommendation of the Joint Appeals Board which is, indeed, much too long a delay.

On the other hand the Tribunal finds that the Applicant's request to award her damages in the sum of \$25,000 is inordinately high and out of all proportion. The errors of the Administration, however unpardonable, cannot lead to enrichment of the Applicant.

VII. The Tribunal finds that the relief proposed by the Joint Appeals Board, and accepted by the Respondent, is adequate and in the circumstances of the case fair and just.

VIII. Even if the Tribunal does not wish to question the good faith of the Applicant in most respects, it observes that this good faith was not immaculate. This relates mostly to the period between 17 December 1978 and 27 June 1979. The fact that the Applicant accepted an undiminished salary after 17 December 1978, calculated at the dependency rate without making a move during a period of over five months or inquiring why the "Special Condition" of her Letter of Appointment was not implemented, taints her innocence. The same applies to her behaviour after 30 June 1980 when she again should have immediately inquired why the "Special Condition" inscribed into her Letter of Appointment of 28 July 1979 was not carried out.

Hence, in the view of this Tribunal, the Applicant's behaviour has contributed to the fact that errors committed by the Administration were not detected earlier. It is expected from a staff member and particularly from one of the high expert level that he or she be sufficiently alert not only when his or her rights seem to be impaired. A staff member of the Applicant's calibre is not supposed to accept monies which—with the lowest measure of diligence—must be identified as overpayment.

As to the delays suffered by the Applicant due to the Administration's indecision and negligence, the Tribunal finds merit in the Respondent's arguments that by not accepting the settlement offered to her in 1982, the Applicant herself contributed to the procrastination of the case.

IX. Considering all the elements of the case, the Tribunal comes to the conclusion that the claim of the Applicant for interest and compensation above the amount of \$800—recommended by the Joint Appeals Board, accepted and paid on 21 January 1985 by the Respondent—cannot be upheld.

X. For these reasons, the application—without prejudice to the order made above under paragraph I—is rejected.

(Signatures)

Samar SEN
Vice-President, presiding
Endre USTOR
Member
Geneva, 12 June 1985

Herbert REIS
Member
R. Maria VICIEN-MILBURN
Executive Secretary

Judgement No. 347

(Original: English)

Case No. 332:
Sabatier

**Against: The Secretary-General
of the United Nations**

Request by a former staff member of UNICEF contesting the legality of the decision to terminate his appointment following the abolition of his post and requesting compensation for the prejudice suffered.

Conclusion of the Joint Appeals Board that there was no evidence that the abolition of the Applicant's post was contrived in order to get rid of him and that he had not suffered any particular financial loss.—Recommendation to reject the application.

Question of the legality of the termination of the Applicant's fixed-term contract.—Application of staff regulation 9.1 (b) and of staff rule 109.1.—Termination of a staff member is the exercise of discretion; however, it must not be exercised in an arbitrary or capricious manner.—The Tribunal holds that the principles defined in Judgement No. 54 (Mauch) as applying to staff regulation 9.1 (c) apply also to termination of a fixed-term appointment under staff regulation 9.1 (b).—Failure to follow a reasonable procedure or the assignment of specious or untruthful reasons may be evidence of bad faith or arbitrariness.—Consideration of the course of events leading to the Applicant's termination.—Applicant's good record of service.—Finding that there was no agreement between the parties on the Applicant's early retirement and that the termination had been decided unilaterally in the exercise of the Respondent's discretionary power.—The Tribunal finds no evidence of improper motives in the decision to abolish the Applicant's post.—Finding that the letter of termination improperly purported that the Applicant